tion, he can still enjoy the right "substantially," by employing some one possessed of the proper qualifications, to handle the property for him. Such legislation would undoubtedly affect the right, but it does not destroy it. It does not necessarily preclude the citizen from "buying and selling" to require him to buy and sell in a certain manner.

The legislature of the state in the exercise of the police power, to secure to all the substantial enjoyment of *all* the rights defined by the constitution, can compel the enjoyment by every individual of his rights in a *manner* not to conflict with others in the equal enjoyment of their rights, not however legislating upon the manner, so as to destroy the substantial right.

"*Sic utere tuo ut alienum non lædas*" is the maxim which lies at the foundation of the power. And to whatever enactment the maxim will not apply the power itself does not extend: Cooley Constitutional Limitations 577.

According to the foregoing opinion, however, it is not sufficient that the citizen should so enjoy his own rights as not to interfere with others in the enjoyment of theirs. But an immoral man must not enjoy certain of his rights *at all*. Not, indeed, because such enjoyment will *necessarily* interfere with others in the enjoyment of their rights, but because he *may* abuse the right.

If such a proposition can be maintained, then there is no right that is beyond the control of the legislature, for we *may*, and indeed all do, abuse almost every right that we enjoy. All the legislature can do is to prohibit the abuse, and punish us for a violation of the prohibition. No other theory is at all consistent with civil liberty.

Many other authorities might be cited in support of the foregoing views, but it is scarcely necessary. A moment's reflection on the practical application of the rule as stated in the opinion, in support of which no authorities are cited by the court, we think, will show that the doctrine cannot be maintained. The opinion is plainly inconsistent with itself, for the reason that the principle which the court states as the authority for protecting the public in the enjoyment of its health, comfort, morals, &c., &c., unless violated, will protect every individual, in some measure at least, of enjoyment of the right of property in intoxicating liquors, and every other kind of property as well. Such a substantial enjoyment is prohibited, however, to Ruth, by the statute in question and the opinion quoted above.

W. W. M.

United States Circuit Court. District of Indiana.

THE EVANSVILE NATIONAL BANK *v.* METROPOLITAN NATIONAL BANK OF NEW YORK, AND THE ASSIGNEES OF WATTS, CRANE & CO.[1]

A transfer of stock in a banking corporation, organized under the Act of June 3d 1864, to a *bonâ fide* holder, is valid though the seller or pledgor be at the time indebted to the bank, and a by-law of the bank declared that no transfer of the stock by any shareholder indebted to the bank should be made without the consent of the board of directors. Such a by-law in effect attempts to create a lien upon

[1] We are indebted to Josiah H. Bissell, Reporter for the United States Courts for the Seventh Judicial Circuit, for the following opinion.

stock for debts of the holder, and the result is the same as if a loan were made upon the security of the stock—a transaction forbidden by the 35th section of the Act.

APPEAL from District Court.

The Evansville National Bank was organized in January 1865 under the Act of Congress of June 3d 1864, 13 Stat. 99.

One of the articles of association provided that the directors might prohibit the transfer of stock without their consent. Accordingly a by-law declared that no transfer of the stock should be made without the consent of the board of directors by any shareholder who was indebted to the bank, and certificates of stock were to contain this provision. After the adoption of this by-law Watts, Crane & Co. became the owners of 150 shares of stock, and Crane, one of the firm, of 50 shares; certificates were issued for these shares in conformity with the above by-law.

Watts, Crane & Co. did business with the Evansville National Bank, and were indebted to the bank from the time they became holders of the stock for money loaned upon bills drawn, endorsed or accepted by them in the usual course of trading.

On the 15th of September 1866, Watts, Crane & Co. borrowed $30,000 of the Metropolitan National Bank of New York, and they and Crane delivered their certificates of stock as a pledge to secure the money so borrowed, and attached to the certificates, bills of sale, and power of attorney for the transfer of the stock.

On the 15th of April 1867, Watts, Crane & Co. became indebted to the Evansville National Bank on an acceptance for $25,000. At this time the Evansville Bank had no notice of the pledge previously made to the Metropolitan Bank. The members of the firm of Watts, Crane & Co. were declared bankrupts by the United States District Court of Indiana, March 3d 1868. The District Court held that the pledge to the Metropolitan Bank was binding, notwithstanding the by-law under which the Evansville Bank claimed a lien upon the stock.

The opinion of the court was delivered by

DRUMMOND, J.—The only question in the case is, whether this by-law was valid under the law of 1864 already cited. The 8th section of that act authorizes the board of directors to make by-laws, but declares they must not be inconsistent with its provisions.

The 35th section declares that no association shall make any

loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares unless to prevent loss on a debt previously contracted in good faith.

The counsel of the plaintiff in the able argument he has presented, claims that the operation of the by-law upon the shares of stock because of the indebtedness of Watts, Crane & Co., and their transfer to the Metropolitan Bank without the consent of the board of directors, was not a loan or discount made on the security of the shares; that there should be a distinct assignment or hypothecation of the stock as security for a loan or discount made; and some authorities have been cited which seem to maintain that principle. But if there is a by-law which declares in substance and effect that for all loans or discounts made to the shareholder a lien shall exist against his stock, the result would be the same as if there was a separate transaction and security given in each case. The shareholder always has the credit on the security of his stock, and thus the very object is accomplished which the 35th section sought to prevent—the absorption of the shares into the assets of the bank. And it will be observed that the law only allows the stock to be taken by the bank as security, or purchased to hold to avoid loss on a debt previously contracted in good faith, and on these the stock is to be retained by the bank only a limited time.

An extended examination of the authorities cited by counsel is unnecessary, because in the case of *The First National Bank of South Bend* v. *Lanier*, recently decided by the Supreme Court of the United States, (11 Wallace 369), the question involved here is discussed by that court, and a principle established that is decisive of this case.

In that case the bank had made a by-law declaring that the stock of the bank should be transferred only subject to the provisions of the 36th section of the Act of 1863 (by which a shareholder was prevented from transferring his stock when he owed the bank). The bank sought to avail itself of this by-law notwithstanding the repeal of the 36th section by the Act of 1864, and the court held that could not be done. This is in effect deciding that no such by-law could be in force under the provisions of the Act of 1864. The language of the court is, "Congress evidently intended, by leaving out of the law of 1864 the 36th section of the Act of 1863, to relieve the holders of bank shares

from the restrictions imposed by that section. The policy on the subject was changed, and the directors of banking institutions were in effect notified that thereafter they must deal with their shareholders as they dealt with other people. As the restrictions fell, so did that part of the by-law relating to the subject fall with them."

The decision of the District Court is affirmed.

United States Circuit Court. Southern District of Alabama.

NEWTON ST. JOHN *v.* THE SOUTHERN EXPRESS COMPANY.

The reception by an express company of a package for transportation directed to a point beyond its route, and the receipt of the entire compensation for the transportation to that point is sufficient to make out a *primâ facie* case of contract to carry and deliver the package to that point.

To avoid liability in such case the company must show a specific contract to carry only to its own terminus, or a settled and uniform rule not to assume liability beyond that point, which rule must be brought home to the consignee either by express notice or by a notoriety so general that he may fairly be presumed to have had notice.

Plaintiff delivered a package marked to a consignee in New York, to defendants an express company in Mobile, paid the freight for the entire distance, and took a receipt stating "that this company is to forward the same to its agent nearest or most convenient to destination only, and then to deliver the same to other parties, they to complete the transportation; such delivery to terminate all liability of this company for such package." The company's route extended only to Lynchburg, but it had an arrangement with Adams Express Company to transport such packages to any point on the latter's route, and receive a *pro rata* share of the freight. *Held*, that the Adams Express Company was the agent of defendants within the terms of the receipt, and defendants were liable for failure to deliver in New York.

If an express company have a settled and uniform rule that money packages must be sealed and endorsed in a certain manner, and such rule is brought home to the knowledge of the consignor who neglects or intentionally omits to comply with it, and the company, in ignorance of the special value of the package, takes ordinary care of it only, the company will not be liable for its loss.

If, however, the money is stolen or converted by an agent of the company, the latter will be liable for its value on a count for money had and received, notwithstanding the violation of its rules by the consignor.

THIS was an action against a carrier for failure to deliver goods delivered to it for transportation.

R. H. Smith and *T. H. Herndon*, for plaintiff.